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T.B., Appellant)	
)	
and)	Docket No. 10-1574
)	Issued: February 24, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Greenville, MI, Employer)	
)	

Case Submitted on the Record

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On May 25, 2010 appellant filed a timely appeal from an April 9, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant established an injury in the performance of duty on November 21, 2009.

On November 23, 2009 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on November 21, 2009 while on his route. He was stacking and rearranging mail in his vehicle and he described a sprain in the

middle back, between the shoulders and neck.¹ The reverse of the claim form indicated that appellant stopped work on November 23, 2009.

Appellant submitted medical evidence regarding treatment on November 23, 2009. In a narrative report, Dr. Harold Wakefield, an osteopath, provided a history that appellant bent over on November 21, 2009 while sorting mail and felt something pull in the upper back. He provided results on examination and diagnosed thoracic spine pain. In a duty status report (Form CA-17) dated November 23, 2009, Dr. Wakefield advised that appellant was disabled for regular work.

In a form report (CA-16) dated November 23, 2009, Dr. Wakefield diagnosed thoracic spine pain and checked a box “yes” that he believed the condition was employment related, stating that appellant bent over and hurt himself at work. A magnetic resonance imaging (MRI) scan dated December 9, 2009 reported a tear of the glenoid labrum. By report dated January 8, 2010, Dr. Wakefield reviewed the MRI scan results and stated that appellant had an injury at work.

By decision dated January 15, 2010, the Office denied the claim for compensation. It accepted that an incident occurred on November 21, 2009, but found the medical evidence was insufficient to establish an injury causally related to the employment incident.

In a letter dated February 17, 2010, appellant requested reconsideration of his claim. He submitted a January 18, 2010 MRI scan report with a diagnosis of small C3-4 and C5-6 disc herniations. In a report dated January 15, 2010, Dr. Janmeet Sahota, an osteopath, provided a history that appellant was stacking mail on November 21, 2009 and felt a sharp pain in his right shoulder area. He provided results on examination and diagnosed mild impingement right shoulder, rule out cervical radiculopathy. By report dated February 15, 2010, Dr. Sahota opined that the C3-4 and C5-6 disc herniations “could certainly have been exacerbated by his work and the type of activities he has to perform as a mail carrier.”

In a March 5, 2010 letter, the Office requested that Dr. Sahota provide a detailed report regarding appellant’s diagnosis and causal relationship to the November 21, 2009 employment incident.

Dr. Sahota was provided with Office definitions of causal relationship terms and asked to address how the accepted incident caused or aggravated the diagnosed conditions. He did not respond. By decision dated April 9, 2010, the Office denied modification of the January 15, 2010 decision. It found that Dr. Sahota did not respond to the March 5, 2010 letter. Further, Dr. Sahota’s reports did not address how appellant’s right shoulder or cervical conditions were related to the accepted incident of November 21, 2009.

¹ Appellant also submitted a narrative statement dated December 9, 2009 describing the November 21, 2009 incident.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."² The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."³ An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

The Office accepted that an employment incident occurred as alleged on November 21, 2009, when appellant was stacking mail and felt pain in his upper back and shoulder area. To establish his claim for compensation, he must submit rationalized medical evidence establishing diagnosed conditions causally related to the employment incident. The Board finds appellant did not meet his burden of proof.

Appellant was initially treated on November 23, 2009 by Dr. Wakefield. While Dr. Wakefield was given a history of a November 21, 2009 incident, his initial diagnosis was thoracic spine pain.⁷ He did not provide a firm diagnosis. Moreover, Dr. Wakefield did not

² 5 U.S.C. § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁷ Pain is generally not considered a compensable diagnosis. *See Robert Broome*, 55 ECAB 339 (2004).

provide a rationalized opinion on causal relationship to the employment incident. The checking of a box “yes” in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁸

A December 9, 2009 MRI scan report diagnosed a tear of the glenoid labrum, but no physician of record offered a medical opinion addressing how this related to the November 21, 2009 employment incident. A January 18, 2010 MRI scan diagnosed small disc herniations at C3-4 and C5-6. With respect to these diagnoses, Dr. Sahota stated in a February 15, 2010 report they “could certainly have been exacerbated by his work and the type of activities he has to perform as a mail carrier.” Medical opinions or conditions “could be” causally related are speculative and therefore of diminished probative value.⁹ In addition, Dr. Sahota appeared to be referring to appellant’s general work activities, rather than the incident accepted in this case. Appellant’s claim is premised on an employment incident of November 21, 2009, not his job duties over more than one workday or shift.

On March 5, 2010 the Office asked Dr. Sahota to submit a detailed medical report on the specific issues presented in this case. It provided Dr. Sahota with specific questions and definitions relevant to addressing causal relation. Dr. Sahota did not respond. The medical evidence of record is not sufficient to establish that appellant’s right shoulder or cervical conditions are related to the accepted incident.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on November 21, 2009.

⁸ See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

⁹ See *Kathy A. Kelley*, 55 ECAB 206, 211 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 9 and January 15, 2010 are affirmed.

Issued: February 24, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board